

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to investigate whether it should adopt standards for deployment of and access to advanced services.

Application No. NUSF-65

United Telephone Company of the West d/b/a Embarq

COMMENTS OF UNITED TELEPHONE COMPANY OF THE WEST d/b/a EMBARQ

United Telephone Company of the West d/b/a Embarq respectfully submits these comments in response to the Commission's Order Opening Docket and Seeking Comment, entered on January 17, 2007.

INTRODUCTION

In NUSF-65, the Commission is investigating whether it should establish standards for the deployment of and access to advanced services in the state of Nebraska. The Nebraska Telecommunications Universal Service Fund Act ("NTUSFA") states that consumers in all regions of the state should have access to advanced services.¹ While access to advanced services is part of state legislative policy, Embarq does not believe that legislative policy constitutes a mandate to the Commission to *require* Nebraska eligible telecommunications carriers ("NETCs") to deploy advanced services.

¹ Neb. Rev. Statute Section 86-323(2).

Because this investigation is in its early stages, all of the pertinent issues may not be identified and there are no specific proposals from the Commission on which to comment. As a result, Embarq is uncertain of the Commission's goals in this proceeding, which makes it difficult to provide comprehensive feedback to the Commission. As this investigation develops, guidance from the Commission regarding the following issues is necessary so that Embarq can provide additional comments at a greater level of detail: (1) Does the Commission want to ensure that all consumers in the state have access to advanced services, or does the Commission simply wish to increase advanced services deployment beyond existing levels; (2) does the Commission wish to make advanced services a supported service, like basic local exchange voice service, and adjust Nebraska universal service fund ("NUSF") support accordingly; and (3) if the answer to the second question is yes, does the Commission want to mandate minimum data speeds, quality of service, pricing, and reporting requirements for the provision of advanced services?

In addition, the Commission appears to use the terms "broadband" and "advanced services" interchangeably in its request for comments, without defining either of those terms. These two terms may have different meanings for different parties, so it is important for the Commission to define these terms as they pertain to this investigation. Embarq appreciates the opportunity to comment on this important issue and, understanding that many questions have not yet been addressed by the

Commission, Embarras will do its best to provide relevant comments to the broad issues raised by the Commission.

ADVANCED SERVICES AS A SUPPORTED SERVICE

In Nebraska, high-cost NUSF funding is available for the following supported services:

004.02A Basic Local Exchange Service: Basic local exchange service, for purposes of receiving NUSF funding, consists of:

004.02A1 Single party service or the functional equivalent within a support area for which an NETC is receiving support, including a block of calling time within a Commission approved local exchange area, for which there are no per-minute or additional charges, that has been approved by Commission order. This does not include extended area service(s).

004.02A2 Dual tone multi-frequency signaling or the functional equivalent;

004.02A3 A standard "white page" or alpha directory listing at the customer's option;

004.02A4 Access to directory assistance services;

004.02A5 Equal access to interexchange services;

004.02A6 Access to emergency 911 or Enhanced 911 services;

004.02A7 Access to operator services;

004.02A8 Toll blocking for qualifying low-income subscribers.

004.02B Other Services: The Commission may, on an interim basis, designate a supported telecommunications service by order until such time as a rulemaking can be completed.²

The current list of supported services does not include advanced services. However, there has been an increasing amount of attention at both the state and federal levels to the issue of whether advanced services should be included in the definition of

² Nebraska Universal Service Fund Rules and Regulations, Section 004.02.

supported services and therefore subject to the receipt of universal service support. Before it proceeds any further in this investigation, the Commission must determine if advanced services should be included in the list of supported services. Embarq believes that the answer to this question is yes, but only if: 1) adequate additional NUSF support is made available to NETCs for the deployment and provision of advanced services; 2) that support does not impermissibly rely on or burden the federal USF; 3) the Commission develops a reasonable time schedule for the deployment of advanced services; and 4) the Commission adopts a reasonable definition of advanced services.

If the Commission were to decide that advanced services should be included in the list of supported services, it must provide adequate additional NUSF support to help NETCs offset the significant cost of deployment and provision of those services. This additional NUSF support must be provided through a fund that is separate and distinct from the NUSF high-cost fund to ensure that high-cost funding currently provided to NETCs for the maintenance, provision, and upgrading of basic local exchange service is not threatened. The Commission must not mandate the deployment and provision of advanced services throughout the state without providing NETCs with adequate additional NUSF support to help fund deployment that would otherwise be uneconomical.

The Commission should also ensure that, in any deployment standards developed, there is sufficient time for NETCs to install the required facilities to

provision advanced services. It will take a significant amount of time and resources to deploy the facilities required for the provision of advanced services to virtually all Nebraskans; creating a deployment schedule that is too aggressive will tax the limited resources of NETCs and cause frustration on the part of both NETCs and their customers as deadlines are established and missed.

Finally, the Commission must adopt a workable definition of advanced services that includes a speed that will ensure that virtually all Nebraskans will have access to advanced services at an affordable rate. Because it will cost NETCs more to provision advanced services at higher speeds, mandating a speed higher than Nebraskans want or need will only increase the cost of deployment needlessly and increase the need for additional funding, either through the NUSF or from the end user.

COMMISSION QUESTIONS

Embarq answers, as set forth below, the questions asked by the Commission in this docket:

- 1. Whether standards for broadband deployment should be adopted for Nebraska eligible telecommunications carriers ("NETCs") receiving high-cost program support.**

This broad question is difficult to answer. Before we can answer a question about developing standards for deployment of advanced services, we must answer the question of whether the Commission should require deployment of advanced services

of NETCs. Currently, no NETC is required by law or Commission rule or regulation to deploy advanced services. As stated above, the Commission should require NETCs to deploy advanced services only if it will include advanced services as a supported service, therefore ensuring that additional NUSF support will be available to make any mandate economical.

Assuming advanced services is a supported service, if the Commission considers implementing standards for the deployment of advanced services, it should not entertain anything more than a time schedule for deployment. The Commission should not consider any requirements for higher data speeds, quality of service, pricing, or reporting. Such requirements would amount to *de facto* regulation of advanced services provided by NETCs; the Commission must take into account that advanced services is a competitive service and any standards the Commission may develop for NETCs may destroy any competitive neutrality in the provision of advanced services. If the Commission considers any regulations in addition to a deployment time schedule, it should do so only on a competitively neutral basis.

Furthermore, as stated above, if the Commission considers establishing deployment standards for advanced services, it must ensure that adequate additional NUSF support, from a fund separate and distinct from the NUSF high-cost fund, is available. Such funding would help NETCs offset the significant cost of deploying advanced services which may otherwise not be economical to deploy.

2. How should the Commission define broadband for the purposes of this investigation? Should the Commission use the definition adopted by the Federal Communications Commission ("FCC")?

If the Commission ultimately decides to include advanced services in the list of supported services, it is important that the Commission not define the service too aggressively. The FCC's current definition of advanced services is 200 Kbps in both directions.³ The Commission may wish to weigh the costs and benefits of a different (faster) definition but Embarq recommends, as stated below, that the Commission not define advanced services at a speed faster than Nebraskans may want or need.

3. What should be the deployment threshold if the Commission adopts standards? Should the Commission measure deployment on a percentage basis, such as percentage of customers or percentage of area served?

Embarq is not certain what the Commission means when it refers to a "deployment threshold." If the Commission is referring strictly to a deployment time schedule, any such schedule must allow NETCs sufficient time to install the facilities needed to provide advanced services. It will take more time and resources to deploy advanced services to the rural areas of the state. A deployment schedule that is too aggressive would harm NETCs by taxing limited funding for deployment. It would also create frustration for NETCs and their customers if the Commission set deadlines that were too aggressive to meet.

³ This issue is another area where additional information is needed before substantive comments can be provided. For example, what does the Commission wish to accomplish by defining advanced services? Does the Commission want to mandate just speeds, or will other attributes of advanced services go into the definition? How will the Commission use the definition(s)?

If the Commission considers adopting a deployment time schedule, the goal of that schedule should be efficiency. For example, any deployment time schedule should measure the percentage of the population in the state capable of receiving advanced services. Many areas of the state have low population densities; therefore a deployment schedule utilizing a percentage of land area served may have the effect of concentrating NETCs' deployment efforts to large areas of the state with little population, which would not provide the greatest number of Nebraskans with access to advanced services on a timely basis.

- 4. What should be the timeline for reaching any broadband deployment standard? Should the standard be fixed or should it gradually increase such as 60 percent in 2007, 70 percent in 2008, etc.**

Again, Embarq will assume for purposes of these comments that when the Commission refers to "deployment standard," it is referring only to a timeline for the deployment of advanced services. The Commission must consider that the deployment of advanced services is an expensive and time consuming process. In addition, in the most rural areas of the state, it will take more time and resources to install the facilities needed to deploy the services to customers. Therefore Embarq believes that any deployment schedule the Commission might consider must gradually increase the percentage of customers capable of receiving advanced services over a period of time, rather than set a standard that would require NETCs to make advanced services available to 100% of the population by a certain date.

5. If the Commission measures the deployment on a percentage basis, how should the Commission measure it?
- i. What are the merits of measuring standards on a company/statewide basis?
 - ii. Should the standards be measured on a disaggregated basis such as the exchange basis? Why or why not?
 - iii. Should the standards be measured on a support area basis? Why or why not?
 - iv. Should the standards be measured on any other basis?

Assuming again that the Commission is referring only to a deployment time schedule for advanced services, the Commission should only consider measurements that are on a company basis. Applying the deployment standards on a more disaggregated basis, such as an exchange or supported area basis, will add unnecessary complexity to NETCs' decision-making process for the deployment of advanced services. It will also make it more difficult for companies to provide advanced services to the greatest number of Nebraskans in a timely manner and in a way that is economical. Many areas of Nebraska have very low population densities; therefore, measuring deployment on an exchange (or supported area) basis will not necessarily result in providing the greatest number of Nebraskans with the benefits of advanced services in a timely manner.

6. How should the Commission treat carriers who do not meet the broadband standards? Should the carrier be disqualified from receiving support? Should this affect their NETC eligibility?

NETCs that do not meet any standards for advanced services that the Commission might develop should not be disqualified from receiving support from the

Nebraska high-cost program or lose NETC eligibility. The Nebraska high-cost program was established to help companies offset the costs of providing basic local exchange voice service to customers in the high cost areas of the state. It would be inappropriate for the Commission to punish companies that do not meet the standards for advanced services by disqualifying them from receiving high-cost support and threatening their NETC eligibility. These actions would only cause disruptions to the ongoing maintenance, provision, and upgrade of basic local exchange voice services for which the high-cost support is intended, and would ultimately harm the consumer.

As mentioned previously in these comments, Embarq believes that, if the Commission chooses to include advanced services in the definition of supported services, it should make adequate additional NUSF support available to NETCs. That additional support should come from a fund separate and distinct from the NUSF high-cost fund. Therefore the Commission should only consider disqualifying NETCs from receiving the additional support when they do not meet the standards for advanced services, but should not disqualify them from any support received from the high-cost fund.

7. Should there be a waiver process? If so, how should the waiver process be implemented?

The Commission must create a waiver process for any standards for advanced services it may adopt. NETCs may encounter unforeseen and unavoidable delays in the deployment of advanced services due to any number of reasons, some of which may be

outside of their control. Therefore, NETCs should be allowed to petition the Commission for a waiver from the standards for advanced services to avoid losing any support from the NUSF.

8. How should the Commission treat NETCs who provide service through the leasing of facilities such as unbundled network elements ("UNEs")? Should they be required to meet any broadband deployment standards?

Embarq cannot answer this question until the Commission provides further clarification of this issue. Embarq will work to develop a position on this issue in the next stages of this proceeding.

CONCLUSION

The Commission must first decide if advanced services should be included in the list of supported services for receipt of NUSF. The Commission should do so only if it provides adequate additional support to NETCs deploying advanced services, establishes a reasonable deployment schedule, and adopts an appropriate definition of advanced services.

The Commission should not adopt any unfunded mandates by requiring NETCs to deploy advanced services without making adequate additional support available from the NUSF. Additional support should be provided through a fund that is separate and distinct from the NUSF high-cost fund, to help offset the significant costs involved with deployment of advanced services which may otherwise be uneconomical. The

Commission should also ensure that any deployment time schedule that might be adopted provides NETCs with sufficient time to install the required facilities, especially in the more rural areas of the state. Any definition the Commission might adopt for advanced services should not include higher speeds that Nebraskans may neither want nor need; requiring higher speeds of advanced services will needlessly increase the cost of deployment of advanced services. The Commission should not adopt any on-going requirements for higher data speed, quality of service, pricing, or reporting, as these standards will amount to *de facto* regulation of advanced services provided by NETCs and could destroy any competitive neutrality in the provision of advanced services.

Respectfully submitted this 15th day of March, 2007.

By: 

William E. Hendricks
United Telephone Company of the West
d/b/a Embarq
902 Wasco Street
Hood River, OR 97031
Phone (541) 387-9439
Fax (541) 387-9753
Tre.Hendricks@Embarq.com

Attorney for United Telephone
Company of the West d/b/a Embarq